SA 135/1998
BEFORE
THE HON'BLE MR. JUSTICE B.P. KATAKEY

JUDGEMENT AND ORDER (ORAL)

This second appeal is directed against the judgment and decree d ated 19.09.1998 passed by the learned Civil Judge, (Sr. Division), Darrang, Mang aldoi, in Title Appeal No.4/1997 setting aside the judgment and decree dated 21. 12.1996 passed by the learned Civil Judge (Jr. Division) No.1, Mangaldoi in Titl e Suit No.15/1995 and dismissing the suit of the plaintiffs.

2. The appellants as plaintiffs filed Title Suit No.15/1995 in the Court of learned Civil Judge (Jr. Division), Mangaldoi for declaration of their right, title and interest over the land covered by scheduled Ka (1), scheduled K a (2) and scheduled Ka (3) on the basis of inheritance and also for permanent in junction restraining the defendants/ respondents from interfering with the posse ssion of the plaintiffs/ appellants in respect of Ka (2) scheduled land, stating inter-alia that the land measuring 8 Bighas 2 Kathas 2 Lechas covered by Dag No .294 and 1 Katha covered by Dag No.374 of Periodic Patta No.13 at Kakalbhangi Jo gigaon under Pachim Dalgaon Mauza originally belonging to Osman Seikh (predecess or and interest of the plaintiffs), Ashalat Mia and Ismail Sheikh as per the Jam abandi prepared in the year 1953-54, out of which Ashalat Mia and Ismail Seikh e xchanged their share of land measuring 2 Bighas 7 Lechas with Jaharuddin, father of the defendants No.1, 2 and 3, thereby said Ashalat Mia and Ismail Seikh no l onger the co-owners in respect of the land Dag No.294. It has further been state d in the plaint that after requisitioned of 3 Kathas 15 Lechas of land in the sa id dag for the purpose of E & D Department, 7 Bighas 3 Kathas 7 Lechas of land r emain; but the Revenue Authority created a new dag being Dag No.374 carving out 1 Katha of the land out of Dag No.294. The further case of the plaintiffs/appell ants is that Jaharuddin again exchanged the land which he got from Ashlat and Is mail with the land belonging to Osman Seikh (predecessor and interest of the pla intiffs) covered by Dag No.310, 311, 312 and 377 of the Periodic Patta No.22 and thus Osman Seikh became the absolute owner and title holder in respect of 7 Big has 2 Kathas 7 Lechas covered by Dag No.294 of Periodic Patta No.22. It is the f urther case of the plaintiffs that the principal defendants on 24.07.1993 tried to dispossess them from the suit land but to failed to do so due to the resistan ce of the plaintiffs and as the principal defendants subsequently also threatene d the plaintiffs to dispossess from Ka (2) scheduled by force in future, the pla intiffs has to bring the suit for declaration of right, title and interest as we ll as for permanent injunction, as aforesaid.

3. The defendants/respondents on receipt of the summons contested t he suit filed by the plaintiffs by filing written statement by taking up the ple a of having no cause of action, maintainability of the suit and also denied the title of the plaintiffs over the Ka (2) scheduled land, contending inter-alia th at Ashlat Mia and Ismail Seikh, who had 4 Bighas 2 Kathas 9 Lechas of land as th eir share in Dag No.294, exchanged their share entire land with Jaharuddin (pred ecessor and interest of the defendants No.1, 2 and 3) and possession was accordi ngly handed over. The defendants have denied that Jaharuddin, at any point of ti me, exchanged any land measuring 1 Bigha 2 Kathas 10 Lechas with Osman Seikh (pr edecessor and interest of the plaintiffs). It has further been pleaded by the de fendants that during the last re-settlement operation old dag was converted old into two dags, namely Dag No.388 and 389 in accordance with the possession of bo th the parties and the demarcation was done and the land under possession of the defendants has been demarcated under Dag No.389. The defendants, however, has n ot denied right, title, interest and possession of the plaintiffs in respect of Ka (1) and Ka (3) scheduled land of the plaintiffs.

4. The learned Trial Court on the basis of the pleadings of the par

ties has framed the following issues: -

1. Whether there is cause of action for the suit?

2. Whether the suit is maintainable in its present form?

3. Whether the suit is bad for non-joinder of necessary parties?

5. Whether proper Court-fee is paid in the suit?

6. Whether the defendants have got any right, title and interest and possession over the suit land as stated in the written statement?

7. To what relief, if any, the parties are entitled?

5. The learned Trial court upon appreciation of the evidences on record decreed the suit of the plaintiffs/appellants by declaring the right, title and interest in favour of the plaintiffs in respect of Ka (1), Ka (2) and K (3) scheduled land and also for permanent injunction in respect of Ka (2) scheduled land against the defendants. Being aggrieved, the defendants preferred Title Appeal No.4/1997 in the Court of the learned Civil Judge (Sr. Division), Darrang, Mangaldoi, which has been allowed by the judgment and decree dated 19.09.1998, as aforesaid, and hence the present appeal by the plaintiffs/appellants.

6. I have heard Mr. A.H. Laskar, the learned counsel for the appellants and also Mr. M.H. Choudhury, the learned counsel appearing on behalf of the respondents.

7. This Court while admitting the second appeal for hearing vide order dated 08.01.1999 framed the following substantial question of law: -

Whether the Appellate Court should have dismissed the suit of the plaintiff on the ground that the revenue records of the year 1973-74 and 1993 relating to the said suit land stood in the name of the defendant when the original patta issued in the year 1953-54, was in the name of the plaintiff.

8. Mr. Laskar, the learned counsel for the appellants has submitted that it is evident from the copies of the Jamabandis as well as the revenue records and the revenue paying receipts that the land covered by the Periodic Patta No.13 stood in the name of Ismail Seikh, Osman Seikh and Ashlat Mia and by subsequent mutation vide Exhibit-3/Jamabandis, the name of Jaharudding was mutated, so also by Exhibit-4/Jamabandi as well as Exhibit-5 copy of the Jamabandi. According to the learned counsel, the appellants predecessor in interest Osman Seikh's name having been reflected in the Jamabandi, the appellants are entitled to a decree declaring the right, title and interest in respect of the suit land being the legal heirs of Osman Seikh. Per contra, Mr. Choudhury has submitted that the appellants, in support of their claim of right, title and interest by way of inheritance have failed to prove the patta issued in the name of those persons and as it is an admitted position that the share of land belonging to Ismail Seikh and Ashlat Mia in Dag No.294 periodic Patta No.13 has been given to Joharuddin by way of exchange, the plaintiffs/appellants cannot claim the said land being 4 Bighas 2 Kathas 9 Lechas as such exchange has duly been proved by the respondents by producing jamabandi of the said land. Mr. Choudhury has further contended that the plaintiffs having pleaded in the plaint that Jaharuddin subsequently exchanged the said land with the land of Osman Seikh (predecessor and interest of the plaintiffs), and by virtue of such exchange he became the owner in respect of the entire land covered by Periodic Patta No.13, the burden lies on the plaintiff, which, according to the learned counsel, the plaintiffs have failed to prove.

9. It appears from the discussion of issue No.5 and 6 by the learne

d Trial Court that the suit has been decreed in respect of all the 3 scheduled l ands on the basis of the copies of the Jamabandi as well as the revenue receipts produced by the plaintiffs, though the learned Trial Court has held that the de cree declaring right, title and interest cannot be passed on the basis of the re venue records, wherein the name of the plaintiffs has been recorded. The learned First Appellate Court, upon discussion of the evidences on record, more particu larly, the Exhibits 1 to 6, the copy of the Jamabandis produced by the plaintiff s as well as the revenue paying receipts has held that as the record of rights c annot confer any title on the plaintiffs, no decree can be passed, the plaintiff having failed to prove their title by producing any cogent evidence establishin g their right, title and interest.

10. The plaintiffs/appellants as discussed above, have admitted in t he plaint that the land covered by old Dag No.294 Periodic Patta No.13 belonged to Ismail Seikh, Ashlat Mia and Osman Seikh. It is also an admitted position of fact that Osman Seikh, who is the predecessor and interest of the plaintiffs/app ellants is one of the co-pattadars in respect of the said patta. The plaintiffs' further case in the plaint is that Ismail Seikh and Ashlat Mia have exchanged t heir share of land covered by Dag No.294 with Jaharuddin. According to the plain tiffs, Jaharuddin subsequently exchange the said land with Osman, by virtue of w hich Osman became the absolute owner in respect of the land covered by Dag No.29 4 of Periodic Patta No.13 (old) and therefore, claimed right, title and interest by way of inheritance. The plaintiffs, however, have miserably failed to prove that such exchange was affected by Jaharuddin in respect of the land covered by Dag No.294 of Periodic Patta No.13 (old). On the other hand, the defendants by producing the patta being Khiraj Patta No.28 proved that the land in scheduled Ka (2) being 4 Bighas 2 Kathas 9 Lechas, originally part of the land covered by Dag No.294 of Periodic Patta No.13, stood in the name of the defendants. The pla intiffs could not produce any evidences to prove such exchange. That apart the r evenue records also reveals that the plaintiffs' names have not been entered in respect of the said land.

11. In view of the above, I am of the view that no illegality has be en committed by the learned lower Appellate Court in setting aside the decree pa ssed by the learned Trial Court in so far as it relates to the land covered by s chedule Ka (2).

12. However, it appears from the judgment and decree passed by the l earned First Appellate Court that in respect of the land covered by Schedule Ka (1) and Ka (3) though the defendants have not disputed the right, title and inte rest, and though the learned First Appellate Court in the judgment has observed that there is no dispute relating right, title and interest of the appellants in respect of the said land, in my considered view, the learned First Appellate Co urt, in view of the admission of the right, title and interest of the plaintiffs in respect of scheduled Ka (1) and Ka (3) by the defendants, ought not to have set aside the decree passed by the learned Trial Court in respect of the said sc heduled land.

13. In view of the above, while affirming the judgment and decree da ted 19.09.1998 passed by the First Appellate Court in Title Appeal No.4/1997 in respect of Ka (2) scheduled land, the judgment and decree passed by the First Ap pellate Court in respect of schedule Ka (1) and Ka (3) land is set aside, meanin g thereby, the suit of the plaintiffs/appellants in respect of schedule Ka (1) a nd Ka (3) stands decreed.

14. The appeal stands partly allowed. No cost.

15. Registry is directed to send down the records forthwith.